

# Terms & Conditions / User Agreement

Effective Date: November 11, 2022  
Last Modified: June 01, 2022  
Sites Covered: <https://xhamster.com/>

## Introduction

Welcome to Our Site's User Agreement (hereinafter "Agreement" or "Terms and Conditions.") The provisions of this Agreement will govern Your use of Our Site(s) and the Services contained therein. You should therefore take some time to read the Agreement carefully. Our Site is different from many other websites on the Internet as it contains advertisements, communications, and links posted by independent third parties, over which We exert no control and with which there is not necessarily any direct association. We do not get involved in any disputes that may develop between Our advertisers and others, and We do not facilitate communication between third parties. Therefore, You are urged to use Your own good judgment and common sense when responding to such advertisements, as We are not responsible for any interactions occurring between Our Users and Our advertisers. Federal law protects sites like Ours from civil claims, so We encourage You to independently research any information found in Our advertisements, before making any decisions. We hope that You thoroughly enjoy Our services, and anticipate that You will find Our Site useful and informative. Should You have any questions or comments regarding Our Site, or its policies, please feel free to contact Us via [help@xhamster.com](mailto:help@xhamster.com). The laws of Your individual city, county, state, province or nation may regulate the activity discussed or promoted by the Site, or by third parties communicating on the Site. Check Your local laws before taking part in any such activities.

## 1. Preliminary Provision

**1.1 Party Definitions** - The operative parties referred to in this Agreement are defined as follows:

**1.1.1 Company** is the operator of <https://xhamster.com/>. "Company" has a meaning as it defines in this Agreement. When first-person pronouns are used in this Agreement, (Us, We, Our, Ours, etc.) these provisions are referring to Company and/or to any other site that we may choose to operate in the future. Additionally, when the terms "the Site" or "Site" are used, these terms refer to <https://xhamster.com/>, any predecessor or successor domain or URL, along with any website published by Us, unless a site is specifically exempt from this Agreement. Our Site(s), and the services available to the Site and that the Site provides ("Services"), may contain images, video and content (collectively referred to as the "Content") and text, software, graphics, data, messages, or any other information, and any other website content owned, operated, licensed, or controlled by the Company (collectively, "Materials").

**1.1.2 You, the User** - As the User of this Site and/or Services, this Agreement will refer to the User as "You" or through any second-person pronouns, such as "Yours," etc. Hereinafter, the User of the Site and/or Services shall be referred to in applicable second-person pronouns. You certify that You are over eighteen (18) years of age.

**1.1.3 User vs. Member vs. Verified Member** - For the purposes of this Agreement, all Members and/or Verified

Members are Users, but not all Users are Members. This Agreement applies to all Users whether they are

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Members or not. You become a User by accessing this Site or the Services in any way, therefore You need not become a Member of the Site to make this Agreement apply to You. You are not considered a Member as defined by this Agreement until such time as You have submitted Your online account Registration (hereinafter "Registration"). You become a Member by registering with the Site for a User ID and password as required by the Registration, as discussed below, or enabling and participating in one of Our live communication features on the Site as a guest. Registration is available without the providing of your e-mail address. Also, registration is available via "Sign up with Google" function, that is available in the registration page of the Site. You are not considered a Verified Member as defined by this Agreement until such time as You have submitted Your online application to participate in our Creators' Program (hereinafter "Verification") subject to these Terms and Creators' Program Terms. You become a Verified Member once your application has been reviewed by Us and Your online account was accepted into the Creators' Program.

## 1.2 Electronic Signatures / Assent Required:

**1.2.1** Nobody is authorized to access the Site or use the Services unless they have signed this Agreement. Such signature does not need to be a physical signature, since electronic acceptance of this Agreement is permitted by the Electronic Signatures in Global and National Commerce Act (E-Sign Act), Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 and similar federal and state laws. You manifest Your agreement to this contractual Agreement by taking any act demonstrating Your assent thereto. Most likely, You have clicked or will click a button containing the words "I agree", "Sign Up" or some similar syntax or use "Sign up with Google" function in order to register on our Website. You should understand that this has the same legal effect as You placing Your physical signature on any other legal contract. If You click any link, button, or other device provided to You in any part of Our Site's interface, then you have legally agreed to all of these Terms and Conditions. Additionally, by using any of Our Site or Services in any manner, including uploading Your Content to Our Site, You understand and agree that We will consider such use as Your affirmation of Your complete and unconditional acceptance to all of the terms in this Agreement.

**1.2.2** If You fail to sign this Agreement, You understand that You are an unauthorized user of the Site and Services, despite any payments made or subscriptions sold to You. No act or omission by Us should be interpreted as a waiver of the requirement that You assent to this Agreement. If You fail to do so, You are still bound by the terms of this Agreement by virtue of Your viewing the Site or using any portion of the Site or Our Services. However, if You fail to electronically sign this Agreement, You stipulate to and agree to pay Us two hundred and fifty dollars (\$250.00) each time You access the Site as liquidated damages for unauthorized access and use, and You agree to pay all of Our costs and expenses, including Attorney's fees and costs, incurred in collecting this unauthorized access fee from You.

**1.3** If You are seeking information regarding any illegal activities, please leave this Site immediately and do not attempt to use the Services. You acknowledge that You are aware of the community standards in your community, and You will only access the content on the Site and/or use the Services if You believe that the content on the Site does not offend the community standards prevalent in Your community.

**1.4** You agree not to use the Services or access the Site if doing so would violate the laws of Your state, province, or country.

## 1.5 Revisions to this Agreement:

**1.5.1** From time to time, We may revise this Agreement. We reserve the right to do so, and You agree that We have this unilateral right. You agree that all modifications or changes to this Agreement are in force and enforceable immediately upon posting. Any updated or edited version supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect. To the extent any amendment of this Agreement is deemed ineffective or invalid by any court, the parties intend that the prior, effective version of this Agreement be considered valid and enforceable to the fullest extent.

**1.5.2** We agree that if We change anything in this Agreement, We will change the “last modified” date at the top of this Agreement so that it is immediately obvious that We have updated the Agreement. The Agreement is located at <https://xhamster.com/info/terms> and a link to the Agreement is also at the bottom of the home page of the Site. You agree to periodically re-visit this web page, and to use the “refresh” button on Your browser when doing so. You agree to note the date of the last revision to this Agreement. If the “last modified” date remains unchanged from the last time You reviewed this Agreement, then You may presume that nothing in the Agreement has been changed since the last time You read it. If the “last modified” date has changed, then You can be certain that something in the Agreement has been changed, and that you need to re-review it in order to determine how Your rights and responsibilities may have been affected by the revisions.

**1.5.3** Waiver – if You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for your failure to do so and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

**1.6** Incorporations by Reference. Although this Agreement represents the primary terms and conditions of service for Our Site, additional guidelines and rules are hereby incorporated by reference. The document(s) which can be found on Our Site, and which are specifically incorporated by reference, and are therefore part and parcel of this Agreement are the following:

**1.6.1** Privacy Policy (available via <https://xhamster.com/info/privacy>);

**1.6.2** Cookies Policy (available via <https://xhamster.com/info/cookie-policy>);

**1.6.3** DMCA Notice & Takedown Policy and Procedures (<https://xhamster.com/info/dmca>).

## 2. Explanation of Account Access and Membership

### 2.1 Access and Limited License

**2.1.1** All Users may access certain public areas of the Site. You understand that all We are providing You is access to Our Services as We provide them from time to time. You need to provide Your own access to the Internet, and any Internet access or other fees that You incur to access Our Site and use Our Services are Your sole responsibility. We are not providing any hardware nor software to You – and You need to purchase or license the necessary hardware and software to access the Site and Services. This Agreement covers all public and non-public areas of the Site.

**2.1.2** By accessing the Site, you certify that:

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**2.1.2.1** You are using the Site solely for personal, non-commercial purposes;

**2.1.2.2** You will not copy or distribute any part of the Site without Our prior written authorization;

**2.1.2.3** You will fully comply with these Terms and Conditions as well as Privacy Policy.

## **2.2 Membership or User Account**

**2.2.1** Although much of the Site is available without creating an account, to access certain features of the Site and Services, You must either register as a Member of the Site or become a Verified Member.

**2.2.2** In connection with completing the Registration, You agree to provide true, accurate, current and complete information about Yourself as prompted by the Registration (such information being the “Registration Data”); and You further agree to maintain and promptly update the Registration Data to keep it true, accurate, current and complete at all times while You are a Member.

**2.2.2.1** As part of Registration, You will be issued or choose a unique username and password which You must provide in order to gain access to the non-public portions of the Site. You also may obtain access to the non-public portions of the Site if you registered on the Site via “Sign up with Google” function.

**2.2.2.2** You certify that when asked to choose a username You will not choose a name which may falsely represent You as somebody else or a name which may otherwise be in violation of the rights of a third-party.

**2.2.3** Community User – Upon completing the Registration, You may choose to become a Community User by submitting a photographic image containing Your face and handwritten text of Your username and “xHamster.com.”. If you comply with requirements described herein, you will receive special mark, that confirms your status as Community User.

**2.2.4** Verified Member – this option is available to all Members and is offered for the purpose to allow Members to activate Creators’ Program features, including but not limited, uploading Content to the Site. Member’s verification means that such User’s documents (documents containing your full legal name, picture, date of birth and other identifying features such as your address) and data have been verified by a third-party service provider as engaged by Us from time to time, and We do not accept any liability for the services provided by it. All data processing is done pursuant to our Privacy Policy and the service provider’s privacy policy. We may request additional documents from a Member for Verification to establish Your age and identity both prior and after the Verification, and We may also change the number of documents requested from Members from time to time in Our sole discretion. Types of documents accepted for Verification purposes are not the same for everyone and are set on a country basis between Us and the service provider, and may include one or several of the following: national ID, national passport, international passport, citizenship card, state ID, driver’s license (only for countries where a national ID or passport is not mandatory). We reserve the right to review all and any verification results received from the service provider engaged at a time and render Our own final and binding decision as to the acceptance of data provided. However, should the Site verify the identity of a particular Member, this verification does not reflect or have any bearing on such Member’s reputation. Verified Members are in no way endorsed by the Site or its agents and have not been subjected to any screening process except as described above in this provision. Therefore, We specifically disclaim any and all liability associated with any communication, both online or offline, with a Verified Member.

**2.2.5** Members are permitted to create one account only

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**2.2.6** Membership may not be transferred or sold to a third party unless otherwise permitted by us in written form.

**2.2.7** You are solely responsible for the activity that occurs on Your account, and You must keep Your account password secure. You must notify the Site immediately of any breach of security or unauthorized use of Your account.

**2.2.8** User access to the Site is free of charge. We do not provide paid memberships of any kind. Any premium memberships or subscriptions made available via the Site are provided in part or entirely by third parties regardless of any branding or names associated with such memberships. The Site is not responsible for the activities of any third party or the content of any third party site, including a third party's use of cookies or any other information (such as IP address, browser type or operating system) collected when You click through links on the Site to their sites or view advertisements. Links to such third party sites are not to be taken as an endorsement by the Site of the third party site or any products promoted, offered or sold on the third party site, or as an indication that such sites are free from computer viruses or anything else that has destructive properties. You are responsible for reviewing any terms and conditions of membership on third party sites.

**2.2.9** Verified Member has a right to participate in our Referral Program as it describes in Appendix 1 to this Agreement.

## **2.3 Termination of Your Membership or User Account.**

**2.3.1** You may cancel Your membership at any time by going to <https://xhamster.com/my/edit/profile>. Click on "Deactivate account" link in the bottom (on the left side) of the form, enter your password and click "Deactivate account" button. This Agreement's provisions shall survive its termination, unless otherwise stated. Upon Our processing of Your request to cancel Your Member account, You will no longer have access to the non-public areas of the Site to which You were a Member.

**2.3.2** Without limiting other remedies, We may immediately issue a warning, temporarily suspend, indefinitely suspend, or terminate Your access and use of the Site and Services at any time, with or without advance notice, if:

**2.3.2.1** We believe, in Our sole discretion, that You have breached any material term of this Agreement or the document(s) it incorporates by reference;

**2.3.2.2** We are unable to verify or authenticate any information You provide to Us;

**2.3.2.3** We believe, in Our sole discretion, that Your actions may cause legal liability for You, Our Users or Us; or

**2.3.2.4** We decide to cease operations or to otherwise discontinue any services or options provided by the Site or parts thereof.

**2.3.3** You agree that neither Us nor any third party acting on Our behalf shall be liable to You for any termination of Your account or access to any part of the Site or Services.

**2.3.4** You agree that if Your access is terminated by Us, You will not attempt to regain access to the Site – using the same or different username – without prior written consent from Us.

**2.3.5** In order to maintain the integrity of the Site and Services, or to investigate complaints, You agree to allow Us

to access Your account and any other information You have submitted or created for as long as You remain a member of the Site.

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required to investigate the complaint or protect the Services.

**2.3.6** You agree that You will not use Our Services to publicly discuss any infractions, warnings, or bannings. You must discuss any concerns about such topics with Us directly.

**2.3.7** If You provide any information that is untrue, inaccurate, not current or incomplete, or if We or any of Our authorized agents have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, We have the right to suspend or terminate Your account and refuse any and all current or future use of the Site and Services by You, as well as subjecting You to criminal and civil liability. If applicable, You are responsible for any credit card charge-backs, dishonored checks and any related fees that Site incurs with respect to Your account. If You fail to reimburse Us for any credit card charge-backs, dishonored checks, or related fees within thirty (30) days of Our initial demand for reimbursement, You agree that You will pay Us one hundred dollars (\$100.00) in additional liquidated damages as well as any costs incurred by Us for each fee incurred.

**2.3.8** The Site and its affiliates disclaim any and all liability arising from fraudulent entry and use of the Site. If a User fraudulently obtains access, the Site may terminate membership immediately and take all necessary and appropriate actions under applicable federal, state, and international laws.

## **2.4** Fraudulent Use of:

**2.4.1 Stolen Cards:** We take credit card fraud very seriously. Discovery that any Member has used a stolen or fraudulent credit card will result in the notification of the appropriate law enforcement agencies and termination of such Member's account.

**2.4.2 Stolen or Fake IDs:** We take ID fraud very seriously. Discovery that any Member has used a stolen or fraudulent ID in the process of Member verification or co-performer verification pursuant to Creators' Program features will result in the notification of the appropriate law enforcement agencies and termination of such Member's account.

**2.5** You agree that Your Content will comply with all provisions set forth in this Agreement. Your Content includes any text, images, video, blog posts, forum comments, or other content or media uploaded or otherwise provided by You for Us to make available on the Site or Services ("Your Content").

**2.6** Subject to Your acceptance of this Agreement, We grant You a limited, non-exclusive, non-transferable personal license to access and use the Site, Materials, and the Services contained therein. We provide the Materials and Services on this Site for the personal, non-commercial use by Users of the Site. Users of this Site are granted a single copy license to view Materials.

**2.7** All Materials and Services available on the Site shall be for private non-commercial use only, and all other uses are strictly prohibited, unless consented to by Us or you and we have signed separate agreement about such presence. If You are a business entity or commercial concern, Your presence on the Site is not allowed unless it is expressly authorized in writing by Us or you and we have signed separate agreement about such presence. We reserve the right to pursue vigorous legal action against unauthorized login by business and commercial entities.

**2.8** We reserve the right to limit the amount of Materials viewed. You agree to prevent any unauthorized copying of the Site, or any of the Materials contained therein. Any unauthorized use of the Site or any of the Materials contained therein terminates this limited license effective immediately. This is a license to use and access the Site for its

intended purpose and is not a transfer of title. You will not copy or redistribute any of the content on this

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Site. We reserve the right to terminate this license at any time if You breach or violate any provision of this Agreement, in which case You will be obligated to immediately destroy any information or Materials You have downloaded, printed or otherwise copied from this Site. Violators of this limited license may be prosecuted to the fullest extent under the applicable law.

**2.9 Service Interruption:** From time to time due to technological factors, scheduled software uploads and other factors beyond Our control, service may be temporarily interrupted. From time to time, certain features of the Site, such as the Site's email system, may not be available for use due to technological and other factors. From time to time, access to the Site and the ability to log into the Site may not be available due to technological and other factors. You agree to hold Us harmless against any such interruption of service.

**2.10 Agreement to Receive Notifications and Other Communications:** We reserve the right to send electronic mail or other messages to You and to other Members. You understand and agree that even unsolicited commercial email sent from Us or Our affiliates is not SPAM as that term is defined under the law and pursuant to our Privacy Policy. The purpose of this communication may include but is not limited to:

**2.10.1** Inform You of any change to the status of Your account;

**2.10.2** Inform You about contact(s) from another Member(s);

**2.10.3** Provide information to You regarding products or services offered by Our affiliates or partners;

**2.10.4** Provide You with information about any item or service that We think, in Our sole discretion, may be of interest to You.

### 3. Special Considerations Regarding Minors

**3.1 Age of Majority.** In order to use the Site or any Services provided by the Company, You must have attained the age of majority in Your jurisdiction. You represent and warrant You are at least eighteen (18) or twenty-one (21) years of age, depending on the age of majority in Your jurisdiction, and that You have the legal capacity to enter into this Agreement. If You are not at least eighteen (18) or twenty-one (21) years of age, depending on the age of majority in Your jurisdiction, You must exit the Site immediately and may not use or access the Site or use the Services in any manner.

**3.1.1** We specifically disclaim any responsibility or liability for any misrepresentations regarding a User's age.

**3.1.2** You represent and warrant that You will not allow any minor access to this Site or Services. Users should implement parental control protections, such as computer hardware, software, or filtering services, which may help Users to limit minors' access to harmful material. You acknowledge that if Your computer or mobile device can be accessed by a minor, that You will take all precautions to keep Our Materials from being viewed by minors. You additionally acknowledge that if You are a parent, it is Your responsibility, and not Ours, to keep any age-restricted content from being displayed to Your children or wards.

**3.2 WE HAVE A ZERO TOLERANCE POLICY FOR PORNOGRAPHIC MATERIAL INVOLVING MINORS AND A**

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**3.2.1 You represent and warrant that Your Content contains nothing involving minors that may be considered pornographic under both state and federal law, as We strictly prohibit the use of such content in relation to Our Services.**

**3.2.2 If You seek any form of pornographic materials involving minors (including “virtual” pornography involving minors), You must exit this Site and cease using Our Services immediately. We do not provide this kind of material and We do not tolerate those who provide this kind of material nor do We tolerate consumers of this kind of material.**

**3.2.3 In order to further Our zero-tolerance policy, You agree that You will report any images, real or simulated, that appear to depict minors on Our Site. If You see any images or other depictions that are questionable, You agree to report these images by emailing Us via [help@xhamster.com](mailto:help@xhamster.com).**

**3.2.4 Include with Your report any appropriate evidence, including the date and time of identification. All reports will immediately be investigated and the appropriate action will be taken.**

**3.2.5 We enthusiastically cooperate with any law-enforcement agency investigating child pornography, and comply with Title 18 U.S.C. 2258A relating to the mandatory reporting of actual pornography involving minors of which We become aware. If You suspect other outside websites are participating in unlawful activities involving minors, please report them to a reporting service such as ASACP.org: <https://www.asacp.org/>.**

## 4. Content and Materials

**4.1 Our Site(s) and Services contain images and content (defined in Section 1.1.1 as “Content”) and text, software, images, graphics, data, messages, or any other information, and any other website owned, operated, licensed, or controlled by Us (defined in Section 1.1.1 as “Materials”).**

**4.2 You acknowledge and stipulate that all of the Materials and Content constitute expressive content that, amongst other laws and regulations, may be fully protected by the First Amendment to the United States Constitution, and other similar legal principles.**

**4.3 You acknowledge and understand that some or all of the Content and Materials on Our Site and transmitted via Our Services may depict activity that is restricted to adults, and may therefore be inappropriate for viewing by minors. You acknowledge that You are aware of the nature of the Content and Materials provided by or through the Site and that You are not offended by such Content and Materials, and that You access the Site and Services freely, voluntarily, willingly, and for Your own personal enjoyment.**

**4.4 You understand that all of the information, data, text, images, audio, graphics, messages, or any other content on the Site or available via the Services, whether posted publicly or transmitted through Our messaging services or the messaging services of third parties, are the sole responsibility of the party from whom the Content or Materials originated. This means that You are entirely responsible for any and all content that You upload, post, transmit, e-mail, message, or otherwise publish via Our Services. We are not always able to control the Materials posted on the Member profiles, forums, or any other User communications, and as such We do not guarantee the accuracy,**

integrity, quality, or any other aspect of such posted Materials or Content. You agree that by using the Site and

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Services covered by this Agreement, You very well may be exposed to Content that You might find offensive, indecent, problematic, or otherwise objectionable. Under no circumstances will we accept liability in any way for any Content and/or Materials posted by, uploaded by or transmitted by Our Members, verified or not.

**4.5** We respect the intellectual property rights of all parties, and have adopted a policy regarding termination of repeat copyright infringers under the Digital Millennium Copyright Act. Copies of Our Repeat Infringer Policy are available to Our Members upon request.

**4.6** We are committed to making the use of Our Site a safe and pleasant experience for Our Members. In order to do this, We reserve the right, at Our sole discretion and with no obligation to do so, to periodically monitor, either at random, or selectively, Member correspondences, profiles and forums within the Site. This includes all communication sent or received through any communication system offered via the Services.

**4.7** We further reserve the right, at Our sole discretion, to delete any content violating the terms within this Agreement. We may delete any Content or Materials including pictures, messages, forum posts, or profiles that are deemed in Our sole discretion to be illegal, immoral, offensive, or in violation of the letter and spirit of this Agreement and the purpose of the Site. Further, all Content submissions may be made by Verified Members only and are subject to mandatory preview as well as to the Site's Community Standards and User Conduct Policy below.

**4.8** Section 230 Notice: You acknowledge Your responsibility to prevent minors under Your care from accessing harmful or inappropriate material. You agree not to allow minors to view any such content, and You agree to take responsible measures to prevent them from doing so. Numerous commercial online safety filters are available which may help users limit minors' access to harmful or inappropriate material. Pursuant to 47 U.S.C. §230(d), You are hereby informed that You can research such services at websites such as: [www.getnetwise.org](http://www.getnetwise.org), [http://www.child-internet-safety.com/internet\\_filters.php](http://www.child-internet-safety.com/internet_filters.php) or <https://xhamster.com/info/parentalcontrol>, among others. Please note that We make no representation or warranty regarding any of the products or services referenced on such sites, and We recommend that You conduct appropriate due diligence before purchasing or installing any online filter. You agree to take particular steps to prevent minors from viewing Our Site or the content received via Our Services if Your computer or mobile device can be accessed by a minor. Finally, You agree that if You are a parent or guardian of a minor child, it is Your responsibility, not Ours, to keep any age-restricted content on Our Site or Services from being displayed or accessed by Your children or wards.

## 5. Restrictions and Regulations Governing Use of Our Site and Services:

**5.1** You agree that You will only use the Site and Services for purposes expressly permitted and contemplated by this Agreement. You may not use the Site and Services for any other purposes, including commercial purposes, without Our express prior written consent.

**5.2** Without Our express prior written authorization, You may not:

**5.2.1** Upload, post, or otherwise make available files or products that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation,

copyright or trademark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consents to do same;

**5.2.2** Upload, post, email or otherwise transmit any submission that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, including, but not limited to, submissions involving underage persons, animals, rape, incest, violence, blood, shitting, vomit, drunk, drugged, passed out or sleeping persons (this list is given as an example only and is not an exhaustive list of submissions that are forbidden on the Website);

**5.2.3** Harm or unlawfully exploit minors in any way (including but not limited to uploading, posting, emailing, or otherwise transmitting any submission involving a minor);

**5.2.4** Upload, post, email otherwise transmit any submission depicting animal cruelty;

**5.2.5** Impersonate any person or entity, or falsely state or otherwise misrepresent Your affiliation with a person or entity;

**5.2.6** Forge headers or otherwise attempt to disguise the origin of any submission transmitted through the Site;

**5.2.7** Upload, post, email or otherwise transmit any submission that You do not have a right to transmit under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);

**5.2.8** Upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas that We may designate for such purpose;

**5.2.9** Interfere with or disrupt the Site, or servers or networks connected to the Site, or disobey any requirements, procedures, policies or regulations of networks or third party providers connected to, or providing the Site;

**5.2.10** Intentionally or unintentionally violate any applicable local, state, national or international law, and any regulations having the force of law;

**5.2.11** "Stalk" or otherwise harass another member or User of the Site;

**5.2.12** Collect or store personal data about other Users, or Members, including via the use of any data mining, bots, or similar data gathering and extraction tools;

**5.2.13** Duplicate any part of Our Site or the Materials contained therein or received via the Services (except as expressly provided elsewhere);

**5.2.14** Create any derivative works based on Our Site or any of the Materials contained therein or received via the Services, and You agree and stipulate that any and all derivative works are NOT "fair use";

**5.2.15** Use Our Site or Services, or any of the Materials contained therein, for any public display, public performance, sale or rental, and You hereby agree and stipulate that any and all such uses are NOT "fair use";

**5.2.16** Re-distribute or "scrape" Our Site or any of the Materials contained therein or received through the Services, and You hereby agree and stipulate that any and all such uses are NOT "fair use";

**5.2.17** Remove any copyright or other proprietary notices from Our Site or any of the Materials contained therein;

**5.2.18** Frame or utilize any framing techniques in connection with Our Site or any of the Materials contained therein;

**5.2.19** Use any meta-tags or any other “hidden text” using Our Site’s name or marks, and You hereby stipulate that any use of the Site’s name or marks, or any other marks owned by Us is an infringement upon Our trademark rights, and You stipulate to liquidated damages of five thousand dollars (\$5,000) per such infringement, plus You agree to pay any and all fees incurred in the recovery of this amount, including attorney’s fees and all associated costs;

**5.2.20** Circumvent any encryption or other security tools used anywhere on the Site or in conjunction with the Services (including the theft of user names and passwords or using another person’s user name and password in order to gain access to a restricted area of the Site);

**5.2.21** Sell, rent, lease, license, sublicense, transfer, distribute, re-transmit, time-share, use as a service bureau or otherwise assign to any third party the Materials or Services or any of Your rights to access and use the Materials or Services as granted specifically by this Agreement;

**5.2.22** Use Our Services for any commercial purpose unless expressly agreed to by Us in writing and at Our sole discretion. Without such consent by Us, Your use of the Site and Services is strictly for personal use;

**5.2.23** Share any information provided to You by another Member unless such Member has given you permission to do so;

**5.2.24** Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party;

**5.2.25** Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another’s property or of the Site and Services;

**5.2.26** Download any file posted by another user of a Service that You know, or reasonably should know, cannot be legally distributed in such manner;

**5.2.27** Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded;

**5.2.28** Restrict or inhibit any other user from using and enjoying the Services;

**5.2.29** Publish falsehoods or misrepresentations that could damage the Site or any third party;

**5.2.30** Post advertisements or solicitations of business;

**5.2.31** Use the Services in connection with unlawful contests, lotteries, or gambling; pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise);

**5.2.32** Organize and/or participate in any funds transfer or any asset transfer arrangement organized by any

**5.2.33** Request or send money, or any other form of financial assistance, from or to any Member that You encounter on this Site;

**5.2.34** Harvest or otherwise collect information about others, including e-mail addresses or other personally-identifiable information;

**5.2.35** Create a username, that consists only of keywords and categories, that are usually used for search optimization in the industry. It is also prohibited to exploit search engine optimization in order to obtain more views and popularity of your profile and interfere the work of the Company's search optimization;

**5.2.36** Create a false identity, including misrepresented real age, location, country of residence, country of origin, religion, height, weight, and any other item of personal description for the purpose of misleading others;

**5.2.37** Provide personal contact information such as email address, telephone numbers, street address or similar personally-identifying information in Your Member profile or any other publicly-viewable posts.

**5.3 Restrictions on Interactive Communication Mediums.** The Site is intended to act as an avenue of communication and provide enjoyment to its Members. The Site supplies various opportunities to its Members to facilitate such communication via forums, discussion boards, blog-type publications, commenting features and other interactive chat capabilities.

**5.3.1 Fraud and Scam Warning:** The Site has no way of determining the validity of any communication that You receive from another Member or the validity of the person behind such communications. You expressly understand and agree that if any other Member that You are in communication with on this Site requests money from You for travel assistance, medical assistance, subsistence or for any other reason, it is almost certainly a scam or a fraudulent scheme and You are at a very high risk of being defrauded. You will report such request along with the username of the requesting member immediately to the Company via [help@xhamster.com](mailto:help@xhamster.com).

Please be advised that the definition "Company" in this section and in the whole Agreement refers to the operator of the Website, which is:

Hammy Media Ltd,  
79 Spyrou Kyprianou, Protopapas Building,  
2nd floor, Flat 201, 3076,  
Limassol, Cyprus.

**5.3.2** We reserve the right to review and/or reject any content created and/or posted by Users and We may delete any content contained within, but not limited to, the communication mediums set forth in Section 5.3, without warning, although the Site undertakes no obligation to monitor User content or take any such actions. We encourage Our Members to report any violations of these restrictions by other Members. Uploading prohibited depictions violates this Agreement, and may result in suspension or cancellation of Your account.

**5.4** You agree to cooperate with Us in causing any unauthorized use to cease immediately. You are solely responsible for submitting any material that violate any United States or international laws even if a claim arises after Your service is terminated, and by doing so, Your actions shall constitute a material breach of this Agreement and the Site shall terminate all of Your rights under this Agreement. Nothing contained in this Agreement shall obligate Us to monitor or investigate any use of Our Services by Our Users or other third parties, other than as required by applicable law.

**5.5 Interference.** Except where expressly permitted by law, You may not translate, reverse-engineer, decompile, disassemble, or make derivative works from any of Our Materials or any other materials from Our Site. User hereby agrees not to use any automatic device or manual process to monitor or reproduce the Site or Materials, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage the Site or any communications on it. If You do not adhere to this provision of this Agreement, You hereby stipulate to and agree to pay liquidated damages of five thousand dollars (\$5,000) plus any and all fees associated with recovery of these damages, including attorney's fees and costs.

## 6. User Submissions

**6.1** The Site allows its Verified Members to submit video or other material, and allows the hosting, sharing, and/or publishing of such submissions. By submitting a video or other material to Us, You indicate Your intent for Us to make such material available on the Site listed at the beginning of this Agreement and any other affiliated sites, whether by affiliation of ownership or contract.

**6.2** You shall be solely responsible for Your own submissions and the consequences of posting or publishing them. In connection with Your submissions, You affirm/warrant that:

**6.2.1** You own or have the necessary licenses, rights, consents, and permissions to use and authorize the Site(s) to use all patent, trademark, trade secret, copyright, privacy, publicity or other proprietary rights in and to all of Your submissions to enable inclusion and use of the submissions in the manner contemplated by these Terms and Conditions and the Creators' Program Agreement;

**6.2.2** You retain all of Your ownership rights in Your submissions; however, by contributing Your submissions to the Site(s), You grant a worldwide, perpetual, non-exclusive, royalty-free, sublicensable and transferable right and license to: copy, modify, publicly perform and publicly display Your submissions on our Site.

**6.2.3** You have the written consent, release, and/or permission of each and every identifiable person in Your submission to use the name or likeness of each individual for use in Your submissions in the manner contemplated by these Terms and Conditions and you are also authorized to provide their ID documents for co-performer verification as required by the Creators' Program Agreement;

**6.2.3.1** Reproduce, transmit, communicate, display, or distribute Your submitted photographs, videos and content, on or as part of Our Site(s), on other Internet site(s), or elsewhere, for promotional or commercial purposes, by means of any technology, whether now known or hereafter to become known;

**6.2.3.2** Reproduce Your photographs, videos and content in digital form of display on the Internet (alone or in combination with other works, including, but not limited to, text, data, images, photographs, illustrations, animation, graphics, video, or audio segments, and hypertext links);

**6.2.3.3** Adapt, modify, or alter Your photographs, videos and content or otherwise create derivative works based upon Your content; and for all other reasonable promotional or commercial uses either as part of the operation of Our Site(s), or as a promotion or operation of any derivative or related businesses.

**6.2.3.4** The license granted by You terminates within a commercially reasonable time after You remove or delete Your submission from the Site(s).

**6.3** Any of your submissions are compliant with all applicable laws, including but not limited to 18 U.S.C. §2257 and 28 C.F.R. 75 and you are able to provide such documents as required upon your Verification and/or Content submission.

**6.4** Although Our Site is not based in the United States, we respect the intellectual property rights of copyright holders, and thus voluntarily comply with the Notice and Takedown provisions of the Digital Millennium Copyright Act ("DMCA"). Our DMCA Notice and Takedown Policy is available here: <https://xhamster.com/info/dmca>.

**6.5** The Site does not endorse any Member submission, and expressly disclaims any and all liability in connection with Member submissions. The Site does not permit copyright infringing activities or infringement of intellectual property rights on the Site, and will promptly and without prior notice remove all content and Member submissions if properly notified of infringements on third party's intellectual property rights. Repeat infringers will have their member access and/or privileges terminated.

## 7. Stipulated Liquidated Damages:

**7.1** In various provisions in this Agreement, We have outlined liquidated damages amounts to be applied as penalties against You if You violate these specific provisions. You specifically agree to pay these amounts. In agreeing to pay liquidated damages, You acknowledge that this amount is not a penalty, that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages.

**7.2** For any breach of a portion of this Agreement that does not specifically state a liquidated damages amount, You hereby agree that any breach of this Agreement shall result in liquidated damages of one hundred dollars (\$100) per occurrence. You specifically agree to pay this one hundred dollars (\$100) in liquidated damages.

## 8. Warranty Disclaimer

**8.1** YOU AGREE THAT YOUR USE OF THE SITE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, THE SITE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND YOUR USE THEREOF. THE SITE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY:

**8.1.1** ERRORS, MISTAKES, OR INACCURACIES OF CONTENT;

**8.1.2** PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SITE;



**8.1.3** UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN;

**8.1.4** INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SITE, ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SITE BY ANY THIRD PARTY;

**8.1.5** ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE.

**8.1.6** THE SITE RESERVES THE RIGHT TO DELETE ANY CONTENT OR LINK WITHOUT ANY NOTICE OR WARNING TO THE USER WHO UPLOADED IT.

**8.1.7** THE SITE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY-PROVIDED PRODUCT OR SERVICE ADVERTISED ON, OFFERED BY, OR FEATURED ON THE SITE OR THROUGH THE SITE OR ANY LINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND THE SITE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## 9. Limitation of Liability

**9.1** IN NO EVENT SHALL THE SITE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY:

**9.1.1** ERRORS, MISTAKES, OR INACCURACIES OF CONTENT;

**9.1.2** PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SITE;

**9.1.3** UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN;

**9.1.4** INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SITE;

**9.1.5** BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SITE BY ANY THIRD PARTY;

**9.1.6** ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR

ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2** IN THE EVENT THAT YOU DO NOT SUPPLY THE SITE WITH YOUR E-MAIL ADDRESS, YOU SPECIFICALLY ACKNOWLEDGE AND WAIVE ANY CLAIM BASED ON THE SITE'S GOOD FAITH DISABLING OF ACCESS TO, OR REMOVAL OF, MATERIAL OR ACTIVITY WHICH HAS BEEN CLAIMED TO BE INFRINGING, OR BASED ON FACTS OR CIRCUMSTANCES FROM WHICH INFRINGING ACTIVITY APPEARS LIKELY, REGARDLESS OF WHETHER THE MATERIAL OR ACTIVITY IS ULTIMATELY DETERMINED TO BE INFRINGING.

**9.3** THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. THE SITE MAKES NO REPRESENTATIONS THAT THE SITE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER LOCATIONS. THOSE WHO ACCESS OR USE THE SITE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN VOLITION AND ARE RESPONSIBLE FOR COMPLIANCE WITH LOCAL LAW.

**9.4** YOU SPECIFICALLY ACKNOWLEDGE THAT THE SITE SHALL NOT BE LIABLE FOR USER SUBMISSIONS OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

**9.5** IN NO EVENT SHALL OUR MAXIMUM TOTAL AGGREGATE LIABILITY HEREUNDER FOR DIRECT DAMAGES EXCEED THE TOTAL FEES ACTUALLY PAID BY YOU FOR USE OF THE SITE OR SERVICES FOR A PERIOD OF NO MORE THAN ONE (1) MONTH FROM THE ACCRUAL OF THE APPLICABLE CAUSE OR CAUSES OF ACTION OR TEN DOLLARS (\$10.00), WHICHEVER IS GREATER. BECAUSE SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## 10. Indemnification:

**10.1** To the extent permitted by applicable law, You agree to defend, indemnify and hold harmless the Site, its parent, subsidiary and affiliated corporation(s), their officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debt, and expenses (including but not limited to attorney's fees) arising from: (i) Your use of and access to the Site; (ii) Your violation of any part of these Terms and Conditions; (iii) Your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that Your content caused damage to a third party. This defense and indemnification obligation will survive these Terms and Conditions and Your use of the Site.

**10.2** The provision of any services which are in violation of any laws is strictly prohibited. If We determine that You or any User has provided or intends to provide any services or material in violation of any law, Your ability to use the Site and Services will be terminated immediately without any reimbursement of any payment You may have made to Us. We have every right to voluntarily cooperate with law enforcement or private aggrieved parties that We may be legally compelled to do so. We do hereby disclaim any liability for damages that may arise from any User providing any material or services for any purpose that violates any law. You do hereby agree to defend, indemnify and hold

Us harmless from any liability that may be imposed on Us arising from Your violation of any law – whether online or offline.

**10.3** You also agree to defend and indemnify Us should any third party be harmed by Your illegal actions or should We be obligated to defend any claims including, without limitation, any criminal action brought by any party.

**10.4** Our Site and Services contains material that may be offensive to third parties. You agree to indemnify and hold Us harmless from any liability that may arise from someone viewing such material and You agree to immediately cease review of the Site and use of the Services should You find them offensive.

**10.5** You agree to defend, indemnify, and hold harmless Company, its officers, directors, shareholders, employees, independent contractors, telecommunication providers, and agents, from and against any and all claims, actions, loss, liabilities, expenses, costs, or demands, including without limitation legal and accounting fees, for all damages directly, indirectly, and/or consequentially resulting or allegedly resulting from Your, or You under another person's authority including without limitation to governmental agencies, use, misuse, or inability to use the Site, Services, or any of the Materials contained therein, or Your breach of any of this Agreement. We shall promptly notify You by electronic mail of any such claim or suit, and cooperate fully (at Your expense) in the defense of such claim or suit. We reserve the right to participate in the defense of such claim or defense at Our own expense, and choose Our own legal counsel, but are not obligated to do so.

#### **10.6 This Service is for Amusement Purposes.**

**10.6.1** You understand and accept that Our Site and Services is an entertainment and recreational service. All content depicts consenting models over the age of eighteen (18) that have provided rights to the Site to publish the content. All images are provided for the amusement and entertainment of Our Members and Our Users.

**10.6.2** Any User accessing Our Site in an effort to engage in or facilitate illegal or tortious activities shall have their account and/or access to the Site and the Services subject to immediate cancellation, and may be reported to the appropriate law enforcement agency.

**10.6.3** You understand and accept that if You attempt to contact other Members on the Site, all activities or interactions resulting therefrom are solely of Your own volition. You understand and accept that no communications between You and other Members is private. You hereby specifically release Us and all other Members from any liability for invasion of privacy, defamation, publicity, false light, and related torts, in the event that Your communications or profile are made public. Nothing contained in this section is intended to limit the scope of releases and/or indemnification contained elsewhere in this Agreement.

**10.6.4** We do not endorse, confirm, support, verify or validate the accuracy or the reliability of any of the information posted by Members on this Site. This includes but is not limited to Member identity, text, photographic images, videos, and any other content. We conduct no background check or criminal history evaluation of Our Members before or after they register as a Member of Our Site. You are encouraged to thoroughly inspect the credentials and background of any person You have contact or communicate with via Our Site or Services.

**10.6.5** You explicitly, expressly, and totally understand and agree that We assume no liability or responsibility, financial, or otherwise for the truthfulness, accuracy, intent, motives, or behavior of anyone on this Site or any of its affiliate sites. Your contact or communicate with Members on this Site, and on any affiliate sites if applicable, is at Your own risk. People use the Internet for various motives and intentions. It is Your responsibility and solely

Your responsibility. Cookies help us deliver our services. By using this website, you agree with our use of cookies. [Learn more](#)  You contact or

communicate with on this Site. We are not responsible and are not liable for any aspect, legal or otherwise, of any conversations, contact, or other information exchanged between Members online or offline.

**10.6.6 When interacting with Members of this Site, USE COMMON SENSE! Do not provide any personal information to individuals who can misuse that information to Your detriment. While the Site and Services may provide a venue for the exchange of information, ideas, and even goods or services, they do not act as a guarantor of the accuracy of such information or activity, and all Users/Members are encouraged to approach the veracity of any communications or contact occurring as a result of the Site and Services with a healthy skepticism.**

**10.7** You hereby discharge, acquit, and otherwise release Company, its parent company, its agents, employees, officers, directors, shareholders, attorneys, and affiliates, from any and all allegations, counts, charges, debts, causes of action, and claims relating in any way to the use of, or activities relating to the use of the Site and Services including, but not limited to claims relating to the following:

**10.7.1** Sexual harassment, negligence, gross negligence, reckless conduct, alienation of affections (to the extent recognized in any jurisdiction), intentional infliction of emotional distress, intentional interference with contract or advantageous business relationship, defamation, privacy, publicity, intellectual property, misrepresentation, any financial loss not due to the fault of the Site, missed meetings, unmet expectations, false identities, fraudulent acts by others, invasion of privacy, release of personal information, failed transactions, purchases or functionality of the Site, unavailability of the Site, its functions and/or services and any other technical failure that may result in inaccessibility to the Site, or any claim based on Vicarious Liability for Torts committed by individuals met on or through the Site and Services, including but not limited to fraud, theft or misuse of personal information, assault, battery, stalking, rape, theft, cheating, perjury, manslaughter, or murder.

**10.7.2** The above list is intended to be illustrative only, and not exhaustive of the types or categories of claims released by You. This release is intended by the parties to be interpreted broadly in favor of Us, and thus any ambiguity shall be interpreted in a manner providing release of the broadest claims. This release is intended to be a full release of claims, and the parties acknowledge the legally binding nature of this provision, and the nature of the rights given up in connection therewith.

## 11. Links and Linking:

**11.1** Some websites which are linked to the Site are owned and operated by third parties. Because We have no control over such websites and resources, You acknowledge and agree that We are not responsible for or liable for the availability of such external websites or resources, do not screen or endorse them, and are not responsible for or liable for any content, advertising, services, products, or other materials on or available from such websites or resources.

**11.2** You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such third-party content, goods or services available on or through any such website or resource. If You decide to access any such third party website, You do so entirely at Your own risk and subject to any terms and conditions and privacy policies

posted therein, and not by this Agreement or Our Privacy Policy, which is incorporated into this Agreement by reference.

**11.3** Links to external websites (including external websites that are framed by the Site) or inclusions of advertisements do not necessarily constitute an endorsement by Us of such websites or the content, products, advertising, or other materials presented on such Site, but are for Your convenience.

**11.4** You hereby agree to hold Us harmless from any and all damages and liability that may result from the use of links that may appear on the Site or via the Services. We reserve the right to terminate any link or linking program at anytime.

## 12. Trademark Information:

**12.1** The name of the Site is considered a service mark owned by Us. We aggressively defend Our intellectual property rights.

**12.2** Other manufacturers' product and service names referenced herein may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners, and may not be used publicly without the express written consent of the owners and/or holders of such trademarks and service marks.

**12.3** All of the marks, logos, domains, and trademarks that You find on the Site and Services may not be used publicly except with express written permission from Us, and may not be used in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits Us.

## 13. Export Control:

**13.1** You understand and acknowledge that the software elements of the Materials on the Site may be subject to regulation by agencies of the United States Government, including the United States Department of Commerce, which prohibits export or diversion of software and other goods to certain countries and third parties. Diversion of such Materials contrary to United States' or international law is prohibited.

**13.2** You will not assist or participate in any such diversion or other violation of applicable laws and regulations.

**13.3** You warrant that You will not license or otherwise permit anyone not approved to receive controlled commodities under applicable laws and regulations and that You will abide by such laws and regulations.

**13.4** You agree that none of the Materials are being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or be used for proscribed activities.

## 14. No Agency Relationship:

Nothing in this Agreement shall be deemed to constitute, create, imply, give effect to, or otherwise recognize a partnership, employment, joint venture, or formal business entity of any kind; and the rights and obligations of the parties shall be limited to those expressly set forth herein.

## 15. Notice:

**15.1 Notice.** Any notice required to be given under this Agreement may be provided by email to a functioning email address of the party to be noticed, by a general posting on the Site, or personal delivery by commercial carrier such as Federal Express or DHL. Notices by customers to Us shall be given by electronic messages unless otherwise specified in the Agreement.

**15.2 Change of Address.** Either party may change the address to which notice is to be sent by written notice to the other party pursuant to this provision of the Agreement.

**15.3 When Notice is Effective.** Notices shall be deemed effective upon delivery. Notices delivered by overnight carrier (e.g., United States Express Mail or Federal Express) shall be deemed delivered on the business day following mailing. Notices mailed by United States Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt. Notices by email and facsimile transmission, with confirmation from the transmitting machine that the transmission was completed, are acceptable under this Agreement provided that they are delivered one (1) hour after transmission if sent during the recipient's business hours, or 9:00 a.m. (recipient's time) the next business day. Either party may, by giving the other Party appropriate written notice, change the designated address, fax number and/or recipient for any notice or courtesy copy, hereunder.

**15.4 Refused, Unclaimed, or Undeliverable Notice.** Any correctly addressed notice that is refused, unclaimed, or undeliverable, because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused or deemed undeliverable by the postal authorities, messenger, facsimile machine, email server, or overnight delivery service.

## 16. Communication not Private:

We do not provide any facility for sending or receiving private or confidential electronic communications. All messages transmitted to Us shall be deemed to be readily accessible to the general public. Visitors should not use this Site or Services to transmit any communication for which the sender intends only the sender and the intended recipient(s) to read. Notice is hereby given that all messages and other content entered into or on this Site or Services can and may be read by the agents and operators of the Site or Services, regardless of whether they are the intended recipients of such messages.

## 17. Force Majeure:



We shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Our reasonable control, including but not limited to: acts of God, such as fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; war, riot, arson, embargoes, acts of civil or military authority, or terrorism; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software, for so long as such event continues to delay the Site's or Services' performance.

## 18. Arbitration Provisions:

**18.1 Binding Arbitration** - If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party must submit the issue to binding arbitration in accordance with applicable Arbitration Ordinance. Claims subject to arbitration ("Arbitral Claims") shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims by Us under applicable worker's compensation law, unemployment insurance claims, intellectual property claims (including but not limited to claims involving copyrights, trademarks, patents, unfair competition, and/or trade secrets), along with actions (regardless of the underlying cause of action) seeking injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in the Republic of Cyprus, in a convenient location agreed to by the parties, or absent such agreement, selected by the Arbitrator. The arbitration shall be conducted by a single arbitrator, knowledgeable in Internet and e-Commerce disputes. The arbitrator shall be willing to execute an oath of neutrality.

**18.2** The Arbitrator shall have no authority to award any punitive or exemplary damages, certify a class action, add any parties, or vary or ignore the provisions of this Agreement. The arbitrators shall be bound by and apply Cyprus law to any dispute submitted for arbitration hereunder, and this Agreement shall be interpreted in accordance with the laws of the Cyprus. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.

**18.3 No waiver of right to arbitration** - There shall be no waiver of the right to arbitration unless such waiver is provided affirmatively and in writing by the waiving party to the other party. There shall be no implied waiver of this right to arbitration. No acts, including the filing of litigation, shall be construed as a waiver or a repudiation of the right to arbitrate.

**18.4** No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement, except for claims involving intellectual property, claims to recover outstanding amounts due to Us and claims for indemnification, may be brought by any party more than one (1) year after the cause of action arose.

## 19. Miscellaneous Provisions:

**19.1** These Terms and Conditions, together with the Privacy Policy and any other legal notices published by Us on the Site, shall constitute the entire agreement between Us and you. Cookies help us deliver our services. By using this website, you agree with our use of cookies. [Learn more](#)  of these

Terms and Conditions is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms and Conditions, which shall remain in full force and effect. No waiver of any term of these Terms and Conditions shall be deemed a further or continuing waiver of such term or any other term, and the Site's failure to assert any right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision. The Site reserves the right to amend these Terms and Conditions at any time and without notice, and it is Your responsibility to review these Terms and Conditions for any changes. Your use of the Site following any amendment of these Terms and Conditions will signify Your assent to and acceptance of its revised terms. YOU AND THE SITE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**19.2 Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be.

**19.3 Severability.** If for any reason a court of competent jurisdiction or an arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

**19.4 No Waiver.** No waiver or action made by Us shall be deemed a waiver of any subsequent default of the same provision of this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Agreement.

**19.5 Headings.** All headings are solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

**19.6 Complete Agreement.** This Agreement constitutes the entire agreement between the parties with respect to Your access and use of the Site, Services and the Materials contained therein, and Your use of the Site and Services, and supersede and replace all prior understandings or agreements, written or oral, regarding such subject matter.

**19.7 Other Jurisdictions.** We make no representation that the Site, Services or any of the Materials contained therein are appropriate or available for use in other locations, and access to them from territories where their content may be illegal or is otherwise prohibited. Those who choose to access the Site and Services from such locations do so on their own initiative and are solely responsible for determining compliance with all applicable local laws.

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Appendix 1 to the Agreement

### Terms and Conditions of Referral Program for Verified Members

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF REFERRAL PROGRAM FOR VERIFIED MEMBERS (THE "TERMS") CAREFULLY BEFORE PARTICIPATING IN THIS PROGRAM. PARTICIPATION IN THIS PROGRAM CONSTITUTES YOUR ACCEPTANCES TO ALL TERMS OF THE REFERRAL PROGRAM AND ALL GENERAL TERMS AND CONDITIONS OF THE SITE (<https://xhamster.com/info/terms>).

The Company offers you an opportunity to earn rewards by inviting new Verified Members to the Site. Your participation in our Referral Program for Verified Members ("Referral Program" and/or "Program") can help you to

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earn rewards in case you follow the Terms.

We reserve the right to terminate the Referral Program at any time for any reason. The Program is administered by the Company, which may outsource certain elements of administration to third parties.

These Terms are applicable to new Verified Members participation in the Referral Program. By participating in the Referral Program, Verified Member ("You") agrees to use the Referral Program as outlined herein, and consistent with any other terms we may apply to the Referral Program. If you do not agree to these Terms in their entirety, then you cannot participate in the Referral Program.

## 1. SCOPE OF REFERRAL PROGRAM

**1.1.** The Referral Program shall apply to Verified Member that decided to refer others to register on the Site, as Verified Members, (hereinafter "Referrer") and to the person (natural person and/or legal entity), that are referred by the Referrer to the Site (hereinafter the "Invited Member").

**1.2.** The Referral Program provides each Referrer with the ability to earn rewards in case the following conditions are met:

**1.2.1.** Referrer shall become a Verified Member as defined in General Terms and Conditions of the Site - <https://xhamster.com/info/terms> (the "General Terms").

**1.2.2.** After the Referrer's successful and finalized registration as a Verified Member, the Referrer will receive a Referral Link (which is unique and personalized) via personal profile on the Site. Referral Link is a unique code that allows the Company to track that the Invited Member was invited by the Referrer.

**1.2.3.** Referrer may share the Referral Link with any natural person or legal entity via any available sources of communication, e.g. via social media, e-mails, websites. Referrers must comply with all applicable laws and regulations and may not make any unlawful and/or unsolicited actions during the sharing of Referral Link. Referrer must comply with up-to-date "SPAM" laws and marketing regulations, which may include the laws of the jurisdiction where the intended Invited Member resides. Any distribution of the Referral Link that could constitute unsolicited commercial email or spam under any applicable law or regulation is expressly prohibited and will constitute grounds for immediate termination of your account and exclusion from Referral Program. The Company reserves the right to automatically disqualify suspicious Referrals.

**1.2.4.** The Invited Member shall only be a natural person or legal entity that is new on the Site and that has never been registered on the Site. The Referrer may not receive any income from the Invited Member that was registered as a Verified Member on the Site prior to receiving the Referral Link from the Referrer. The Referrer shall not receive any income from rejected or incomplete registration attempts by the Invited Member.

**1.2.5.** The Invited Member shall register as a Verified Member in accordance with the General Terms via Referral Link of the Referrer. We shall not pay any reward to the Referrer if the registration as Verified Member of the Invited Member was made without Referral Link. It is an obligation of the Referrer to provide Invited Member with Referral Link, and we bear no responsibility if registration as Verified Member was made without such Referral Link.

**1.2.6.** The Referrer may receive five percent (5%) of the total income, which the Invited Member will receive from the Company during twelve (12) months after registration as a Verified Member. The Company, at its sole discretion, reserves the right to define sources of income of the Invited Member that will count towards calculation of the Referrer's reward. The Company will place such sources and Referrer's reward on a special web page available for the Referrer.

**1.2.7.** The duration of the Referral Program is twelve (12) months after the registration of the Invited Member as a Verified Member. The duration of the Referral Program starts from the date of the creation of the account by the Invited Member (not from the date of verification of this account, not from the upload date of its first uploaded video, etc.).

**1.3.** The Referrer may not earn more than \$50,000 (Fifty Thousand US dollars) for one Invited Member for the whole duration of the Referral Program.

**1.4.** To raise the possible reward of the Referrer, the Company may collaborate with third-party service providers. In such a case, if the Invited Member registers on the website(s) of third-party service providers, then the Invited Member's latter registration will be automatically linked with the Referrer for the purpose of receiving an additional reward. In case that such interaction increases the income of the Invited Member, the Referrer will be awarded with an extra reward.

The following rules are applicable for the Referrer and for the Invited Member in connection with the said third-party service providers:

- The duration of the Referral Program starts from the date of the creation of the account by the Invited Member on the Site or on website(s) of the third-party service providers, depending on which action occurred first.
- You give us the right to transfer your personal data to the said third-party service providers in accordance with our Privacy Policy.
- At the same time, we do not own and/or operate third-party service providers' website(s). You acknowledge and agree that We are not responsible or liable for the availability of such external websites or resources, do not screen or endorse them, and are not responsible for or liable for any content, advertising, services, products, or other materials on or available from such websites or resources. In addition, your business dealings or correspondence with such third parties are solely between you and the third parties. We encourage you to read the terms and conditions and/or privacy policy of the said third-party service providers carefully prior to entering legal relationships with them.

## 2. PAYMENT TERMS

**2.1.** Company is obliged to pay Referrer a fixed income share percentage of the Invited Member in case the procedure described in the Terms was met.

**2.2.** The precise amount payable shall be disclosed to the Referrer via the special web page with Referrer's reward statistics.

**2.3.** The Company reserves the right to cancel or change the payment methods available to Referrers, the timing of payments, the minimum referral fees required for payment, and any other payment terms in its own discretion, without prior notice. You acknowledge and agree that it is your responsibility to review the Site periodically for any changes to the payment terms.

**2.4.** The Company reserves the right to determine the manner in which payments shall be processed. Payments shall be usually made on a monthly basis if another term is not specified separately by the Company.

**2.5.** You acknowledge and agree that the Company is not responsible for any currency conversion charges or fees you may incur as a result, or for any fluctuations in the respective value, if any.

**2.6.** It is your responsibility to determine which, if any, taxes apply to the payments connected with the Referral Program, and it is your responsibility to report and remit the correct tax to the appropriate tax authority. You agree that the Company is not responsible for determining whether taxes apply to your payments in connection with the Referral Program and does not act as your tax agent.

**2.7.** The Company reserves the right to monitor the actions of the Referrer in order to define whether the Referrer acts in accordance with applicable laws, regulations and/or internal procedures of the Company. In case the Referrer violates any laws, regulations and/or internal procedures of the Company, the Company may impose fines and other kinds of legal liability to the Referrer, including, without limitation, the withholding of earned rewards of the Referrer.

## 3. ELIGIBILITY

**3.1.** To participate in the Referral Program the Referrer must meet the following criteria:

**3.1.1.** The Referrer must be at least 18 years old or of other legal age, according to Referrer's relevant jurisdiction. IF YOU ARE UNDER 18 YEARS OF AGE, YOU MAY NOT USE, ACCESS, OR PARTICIPATE IN THE PROGRAM AT ANY TIME OR IN ANY MANNER.

**3.1.2.** The Referrer must finish the registration as Verified Member according to the General Terms.

**3.1.3.** The Referrer must have full power and authority to enter into this legal relationship, and by doing so will not violate any other legal relationships.

**3.1.4.** The Referrer must ensure that Invited Member is at least 18 years old or of other legal age, according to Invited Member's relevant jurisdiction and that the Invited Member is registered as Verified Member.

**3.1.5.** The Referrer and Invited Member must fully comply with General Terms.

**3.1.6.** The Referrer must not use any illegal content, ways and/or actions to attract Invited Members to register on the Site. In the event that we believe, at our sole and absolute discretion, that the Referrer violates these Terms and General Terms, your account with the Company will be immediately terminated, and all rewards that would have otherwise been payable to you hereunder will be deemed surrendered by you in partial payment of the damages for your breach.

**3.1.7.** The Referrer must not engage in any type of spamming. No spamming of any kind or in any form, whatsoever, is permitted in relation to Referral Program.

## 4. MISCELLANEOUS PROVISIONS

**4.1.** In case the definition in these Terms does not have its meaning, it shall be understood as it appears in the General Terms.

**4.2.** All terms and conditions of the General Terms shall be applicable to the Referral Program unless otherwise is specified in these Terms.

**4.3.** Referrer's participation in the Referral Program does not authorize Referrer to act on our business', its parent's or their respective affiliates' behalf. Nothing herein is intended or will be construed to constitute or imply a joint venture, employer-employee relationship, partnership, or association between Referrer and the Company, its parent or their respective affiliates. By participating in the Referral Program, Referrer acknowledges that Referrer does so at Referrer's own risk and as an independent contractor, and that the Company is not directing how Referrer fulfils its obligations hereunder.

**4.4.** By participating in the Program, you agree to and will indemnify and hold our business, its parent, and their respective affiliates harmless from and against any and all damages, costs, expenses, claims, or liabilities of any kind, including third party claims, whether pending or threatened, including without limitation, attorneys' fees and court costs, incurred by any of them arising out of or related to your participation in the Program or breach of these Terms.

**4.5.** The Company is not responsible for errors, omissions, malfunctions, interruptions, deletions, delays or failures of operations. The Company reserves the right to close the account(s) of any Referrer and/or Invited Member and to request proper payment if the Referrer and/or Invited Member attempts to use the Referral Program in a questionable manner or breaches any of these Terms or is in violation of any law, statute, or governmental regulation. All of the Company's decisions are final and binding.

**4.6.** The Company reserves the right to cancel the Referral Program or to change these Terms at any time at its sole discretion. The Program is subject to modification or termination at any time without notice at the Company's sole discretion.